

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at
Chairperson

1:30 a.m./p.m. on February 16, 1984 in room 526S of the Capitol.

All members were present except:

Representatives Smith, Brady, Hensley, Murphy - E
Representatives Roe & Peterson

Committee staff present:

Russ Mills, Research Department
Mary Torrence, Revisor's Office

Conferees appearing before the committee:

Representative Dave Louis
Rod Beeker, Attorney General's Office
Peggy Boggs, Real Estate Commission
T.C. Anderson, Kansas Society of Public Accountants
George Erickson, Becker CPA School
Walter Scott, DeHart & Darr
Terry Cobb, Kansas Association of Realtors
Harley Duncan, Secretary of Revenue
Glen Cogswell, R.L. Polk & Company
Larry Magill, Independent Insurance Agents of Kansas

The meeting was called to order by Chairman Miller.

Representative Aylward made a motion, seconded by Representative Matlack, to approve the minutes of the February 15 meeting. The motion carried.

HB2917 - open records

Representative Dave Louis explained the bill and explained to the committee three technical corrections.

Rod Beeker, Attorney General's Office, gave testimony on the bill and agreed with the amendments explained by Representative Louis. He gave the committee a balloon with amendments. See attachment B.

Peggy Boggs, Education Specialist for the Real Estate Commission, presented the committee with a proposed amendment and a statement on HB2917. See attachment C.

T.C. Anderson, Kansas Society of Public Accountants, told the committee he agreed with the concept of the amendment just proposed by the Real Estate Commission. He suggested that the committee might want to take this one step further to make outside providers comply with the Kansas Proprietary School Act.

There was discussion by the committee on the Proprietary School Act as it relates to HB2917.

George Erickson gave testimony on behalf of the Becker CPA School saying that they support the general realtor concept although it might need to be fine tuned.

Walter Scott, DeHart & Darr, explained how his client would be effected by passage of this legislation. He also distributed a copy of rules and regulations for direct mailing in Illinois. See attachment D & E.

Terry Cobb, Kansas Association of Realtors, in support of HB2917 which would allow their association to receive lists from state agencies for their professional work. See attachment F.

Hearings were concluded on HB2917.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS,
room 526S, Statehouse, at 1:30 a.m./p.m. on February 16, 1984

HB2865 - Concerning records of the division of
motor vehicles

Harley Duncan, Secretary of Revenue, gave testimony in support of the bill and told the committee that Mr. Beeker's amendment was a good one. See attachment 6.

Rod Beeker, Attorney General's Office, explained to the committee how his amendments were related to the two bills (HB2865 and HB2917).

Glen Cogswell, R.L. Polk & Company, gave testimony on the bill and presented an amendment. He suggested broadening of the bill. See attachment 6.H.

Secretary Duncan told the committee he had no problem with the amendment suggested by Mr. Cogswell.

Larry Magill, Independent Insurance Agents of Kansas, explained how insurance agencies would be effected by the bill and suggested some amendments. See attachment 6.I. Their primary concern has to do with making motor vehicle violation records available to local agencies.

Hearings were concluded.

The meeting was adjourned.

0083 such treasurer shall deposit the entire amount thereof in the
0084 treasury of the political or taxing subdivision and credit the same
0085 to the general fund thereof, unless otherwise specifically pro-
0086 vided by law.

0087 (f) Any person who is a certified shorthand reporter may
0088 charge fees for transcripts of such person's notes of judicial or
0089 administrative proceedings in accordance with rates established
0090 pursuant to rules of the Kansas supreme court.

0091 Sec. 2. Section 6 of 1984 House Bill No. 2668 is hereby
0092 amended to read as follows: Sec. 6. (a) Each public agency
0093 shall adopt procedures to be followed in requesting access to and
0094 obtaining copies of public records, which procedures shall pro-
0095 vide full access to public records, protect public records from
0096 damage and disorganization, prevent excessive disruption of the
0097 agency's essential functions, provide assistance and information
0098 upon request and insure efficient and timely action in response
0099 to applications for inspection of public records.

0100 (b) A public agency may require a written request for in-
0101 spection of public records but shall not otherwise require a
0102 request to be made in any particular form. A public agency shall
0103 not require that a request contain more information than the
0104 requester's name and address and the information necessary to
0105 ascertain the records to which the requester desires access ~~and~~
0106 ~~the requester's right of access to the records~~. A public agency
0107 may require proof of identity of any person requesting access to a
0108 public record. No request shall be returned, delayed or denied
0109 because of any technicality unless it is impossible to determine
0110 the records to which the requester desires access.

0111 (c) A public agency shall establish, for business days when it
0112 does not maintain regular office hours, reasonable hours when
0113 persons may inspect and obtain copies of the agency's records.
0114 The public agency may require that any person desiring to
0115 inspect or obtain copies of the agency's records during such
0116 hours so notify the agency, but such notice shall not be required
0117 to be in writing and shall not be required to be given more than
0118 24 hours prior to the hours established for inspection and ob-
0119 taining copies.

A public agency also may require that a person requesting public records or any information therein provide written certification that the requester does not intend to, and will not, sell or give or otherwise make available to any other person any list of names or addresses contained in or derived from such records or information for the purpose of allowing the latter person to sell or offer to sell any property or services to any person listed or to any person who resides at any address on said list.

Atch. B

0305 (34) Financial information submitted by contractors in quali-
0306 fication statements to any public agency.

0307 (b) As used in this section, the term "cited or identified"
0308 shall not include a request to an employee of a public agency that
0309 a document be prepared.

0310 (c) If a public record contains material which is not subject to
0311 disclosure pursuant to this act, the public agency shall separate
0312 or delete such material and make available to the requester that
0313 material in the public record which is subject to disclosure
0314 pursuant to this act. If a public record is not subject to disclosure
0315 because it pertains to an identifiable individual, the public
0316 agency shall delete the identifying portions of the record and
0317 make available to the requester any remaining portions which
0318 are subject to disclosure pursuant to this act, unless the request is
0319 for a record pertaining to a specific individual or to such a limited
0320 group of individuals that the individuals' identities are reason-
0321 ably ascertainable, the public agency shall not be required to
0322 disclose those portions of the record which pertain to such
0323 individual or individuals.

0324 (d) The provisions of this section shall not be construed to
0325 exempt from public disclosure statistical information not de-
0326 scriptive of any identifiable person.

0327 (e) Notwithstanding the provisions of subsection (a), any
0328 public record which has been in existence more than 70 years
0329 shall be open for inspection by any person unless disclosure of
0330 the record is specifically prohibited or restricted by federal law,
0331 state statute or rule of the Kansas supreme court or by a policy
0332 adopted pursuant to K.S.A. 72-6214 and amendments thereto.

0333 Sec. 4. Section 11 of 1984 House Bill No. 2668 is hereby
0334 amended to read as follows: Sec. 11. (a) ~~Except to the extent~~
0335 ~~otherwise authorized by law, No person shall knowingly sell,~~
0336 ~~give or receive, for the purpose of selling or offering for sale any~~
0337 ~~property or service to persons listed therein, any list of names~~
0338 ~~and addresses contained in or derived from public records other~~
0339 ~~than except:~~

0340 ~~(1) Lists of names and addresses from public records of the~~
0341 ~~division of vehicles obtained under K.S.A. 74-2012 and amend-~~

~~0342~~ ~~ments thereto;~~

~~0343~~ (2) *lists of names and addresses of persons licensed, regis-*
~~0344~~ *tered or issued certificates or permits to practice a profession or*
~~0345~~ *vocation may be sold or given to, and received by, an organiza-*
~~0346~~ *tion of persons who practice that profession or vocation for*
~~0347~~ *membership, informational or other purposes related to the*
~~0348~~ *practice of the profession or vocation; and*

~~0349~~ (3) *to the extent otherwise authorized by law.*

~~0350~~ (b) *Violation of this section is a class C misdemeanor.*

(c)

~~0351~~ Sec. 5. Sections 5, 6, 7 and 11 of 1984 House Bill No. 2668
~~0352~~ are hereby repealed.

~~0353~~ Sec. 6. This act shall take effect and be in force from and
~~0354~~ after its publication in the statute book.

Except as otherwise specifically provided by law, no person shall knowingly use or sell to any person any list of names or addresses contained in or derived from public records for the purpose of selling or offering to sale any property or services to any person on said list or to any person who resides at an address on said list.

(b) Nothing in this section shall be construed to prohibit

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February 15, 1984

The Honorable Robert H. Miller
Chairman
House Federal and State Affairs Committee
Room 112-S
Capitol Building

STATE OF KANSAS

**KANSAS
REAL ESTATE
COMMISSION**

PHONE: (913) 296-3411
217 East Fourth
TOPEKA, KANSAS 66603

Dear Representative Miller:

RE: H.B. 2917

Following is a proposed amendment which would be substitute language for lines 0343 through 0348.

(2) Lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation, or persons who are to be examined to obtain a license, certificate or permit to practice a profession or vocation, may be sold or given to, and received by any person or organization for educational purposes, approved by appropriate state agency,

Any consideration that you may give this letter will be appreciated.

Respectfully yours,

J Paul Flower
J. Paul Flower, Director
Real Estate Commission

- COMMISSIONERS:**
- IGNATIUS "ICKIE" KISNER**
1ST CONGRESSIONAL DISTRICT
STAFFORD
 - DORA I. "SUSIE" FARMER**
CHAIRPERSON
2ND CONGRESSIONAL DISTRICT
TONGANOXIE
 - M. W. PERRY III**
3RD CONGRESSIONAL DISTRICT
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VICE-CHAIRMAN
4TH CONGRESSIONAL DISTRICT
HUTCHINSON
 - THERESA M. KARLESKINT**
5TH CONGRESSIONAL DISTRICT
PARSONS
 - J. PAUL FLOWER**
DIRECTOR

MEMBER:
NATIONAL
ASSOCIATION
OF
REAL ESTATE
LICENSE LAW
OFFICIALS

Atch. c



February 16, 1984

Mr. Chairman, members of the Committee, I am Paul Flower, Director of the Real Estate Commission. On behalf of the Commission, I would like to thank you for this opportunity to appear and discuss a concern which the Commission feels needs attention.

The language in the letter in front of you is offered as a substitute for lines 0343 through 0348. Since the language in H.B. 2917 is not specifically in the license act of the Real Estate Commission, it must apply to all licensing agencies. In visiting with Dr. Scibetta, Board of Nursing, and Jean Barbee, Board of Technical Professions, both expressed a concern for more restrictive language. (Both are not here, I believe, as they are attending a hearing on S.B. 643, where I will go when you have finished with questions addressed to me.) The Commission would like for the release of names and addresses to be limited to education purposes; however, the language is not broad enough to include all who provide education for real estate education requirements.

This office sees a need to provide lists of persons who have not met the statutory education requirements (pre-license and continuing education) to all providers. Continuing education hours must be completed in order to renew an active license. A deactivated license may be renewed without the hours, but the hours must be completed prior to activation of the license. Most licensees do not know where or when courses are offered.

Also, cross checking a pass-fail list with a class roster is really the only effective way to evaluate an instructor's performance.

STATE OF KANSAS

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Every provider is concerned with the caliber of its instruction; and, additionally, instructors need and want to know any specific areas in which they are not "getting through" to their students.

The Commission believes that authority to sell or give lists for education purposes, or other purposes approved by the licensing agency, is in the best interest of both the public and the licensees.

I appreciate the opportunity to express these concerns of the Commission and would like to attempt to answer any questions you may have.

ALTER N. SCOTT, JR.
ATTORNEY AT LAW
420 WEST 33RD
TOPEKA, KANSAS 66611

TELEPHONE OFFICE 266-4220

Use of Motor Vehicle Registration Lists
for Commercial Purposes

..."(when a company) acquires records from, say, a State motor registry, it is doing no more than any citizen could do."*

Motor vehicle registration lists are a valuable tool for direct mail sellers, charitable organizations and political candidates and groups because the list is annually updated and provides a current and correct name and address.

Motor vehicle registration lists are used by small merchants selling goods, charitable and public interest groups raising funds, and political leaders seeking constituent advice and support.

Small business: two-thirds of the holders of third-class bulk-mail permits are companies doing less than half a million dollars in business per year.

The Postal Service estimates that in 1974, charities and public interest groups raised \$20 billion, or 80 percent of all contributions through direct mail.

Political leaders and government agencies send out questionnaires to obtain citizen perspective. Political candidates solicit support for their campaigns and programs.

Companies that use motor vehicle registration lists include magazine publishers, automobile dealers inviting prospective customers to their

* Personal Privacy in an Information Society. The Reports of the Privacy Protection Study Commission, July, 1977, U.S. Government Printing Office, Washington, D.C.

Atch. D

showrooms, furniture companies, lawn services, retail stores, travel clubs, book publishers, and local merchants offering discount coupons to stimulate business.

The Privacy Commission identified several societal benefits of direct mail:

a marketing tool for small businesses

a fundraising mechanism for charities

political fundraising (especially in light of new election laws)

the economic importance of direct mail advertising generally

Kansas can benefit from the sale of motor vehicle lists. The state earns revenue from each sale if it follows the practice of most other states. A sale of the listing of all vehicles registered in Kansas would bring in revenue each year of \$840,000. *

The sale of motor vehicle lists would be helpful to the Kansas direct mail industry as well. In these harsh economic times, the direct mail industry is healthy and growing.

The sale of motor vehicle registration lists does not violate a citizen's right to privacy.

When we drive our car, we do so in the public arena and it certainly is not privileged or confidential information. Motor vehicle registration records are "public" records and accessible to anyone.

* Based upon a comparison with Illinois revenues.

In Lamont v. Commissioner of Motor Vehicles, the court considered constitutional and common law privacy issues. Plaintiffs sought to enjoin New York's Motor Vehicle Commissioner from selling registration records, and claimed that a constitutional and common law invasion of privacy arose from the selling of names and addresses. Plaintiffs claimed that registrants were subjected to considerable annoyance, inconvenience and damage as a result of advertising and solicitation mail. The court granted defendants' motion to dismiss and said:

The mail box, however, noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life.' The short, though regular journey from mail box to trash can...is an acceptable burden, at least so far as the Constitution is concerned. *

The court concluded that direct mail advertising does not violate the Constitution.

A state motor vehicle department can protect registrants who do not wish their names to be rented or sold. For example, the department can inform registrants that lists may be sold and institute a procedure whereby any registrant can tell the agency that he does not want his name used for this purpose. The Privacy Commission recommended this approach.

Recommendation (3):

That each State review the direct-mail marketing and solicitation uses that are made of State agency records about individuals and for those that are used for such purposes, direct the State agency maintaining them to devise a procedure whereby an individual can inform the agency that he does not want a record pertaining to himself to be used for such purposes and have that fact

* 391 U.S. 915

noted in the record in a manner that will assure that the individual's preference will be communicated to any user of the record for direct-mail marketing or solicitation. Special attention should be paid to Department of Motor Vehicle records and the practices of agencies who prepare mailing lists for the express purpose of selling, renting or exchanging them with others. *

The Privacy Commission also considered how the department can inform purchasers which names are "no send" and concluded:

It should be enough to note next to an individual's name on a public record that he does not want his name used for marketing or solicitation. The public record compiler would still be able to copy the record, just as any other member of the public can, but it would be on notice that the individual had objected to having his name on a list, and presumably, for economic reasons, would not include that name on lists it develops for its clients. **

There is another way for an individual to remove his name from most mailing lists: The Mail Preference Service (MPS). MPS is an industry measure to enable consumers to get off or get on mailing lists. An individual who wants less or more mail writes to the Direct Mail/Marketing Association *** and requests a name/removal or name/add form. His name will be deleted or added on computer tapes regularly circulated to the over 1400 participating association members. The Mail Preference Service is regularly publicized in national magazines and in newspapers.

The motor vehicle department can be fully aware of the uses made of the registration listing. The department can prepare a contract for signature by the department and the purchaser or renter of the list. The contract can require a description of the mailings that will be

* Personal Privacy, page 153.

** Personal Privacy, page 153.

*** Mail Preference Service, 6 East 43rd Street, New York, New York 10017

sent to registrants, and the department can request a sample mailing. This way the department knows how the names will be used.

The motor vehicle department can police compliance with its rules regarding lists by inserting fictitious names in the computer printout directed to departmental employees.

Some of our products:

The Story of Civilization by Will and Ariel Durant -- all volumes

The World's Great Museums

Solar Heating and Cooling

The Family Medical Guide

Step by Step Plumbing

Beethoven's Symphonies

The Epic of Flight

World War II

A Treasury of Christmas Crafts and Foods

The Oxford English Dictionary

Cookbooks of the World

Recordings of the Great Band Era

We believe many Kansas citizens would find some of these of interest to them and their children. This is particularly true in the rural areas where direct mail is often the main source of books, records, etc.

ILLINOIS REGISTER

SECRETARY OF STATE

TEXT OF EMERGENCY RULES FOR CODIFICATION

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1002
SALE OF INFORMATION

Section

- 1002.10 Applicability
- 1002.20 Definitions
- 1002.30 Fees
- 1002.40 Requests
- 1002.50 Lists of Purchasers
- 1002.60 Contract
- 1002.70 Public Records
- 1002.80 Lists of Licenses
- 1002.90 Social Security Numbers

AUTHORITY: Implementing Section 2-123, authorized by Section 2-104, 2-107, and 2-123 of the Illinois Vehicle Code (Ill. Rev. Stat., 1981, ch. 95½, pars. 2-104, 2-107, and 2-123.)

SOURCE: Adopted and codified at 7 Ill. Reg. _____, effective _____

Section 1002.10 Applicability

These Rules apply to the sale and dissemination of information contained in the Office of the Secretary of State, which information has been collected pursuant to the Illinois Vehicle Code for the issuance of drivers licenses, vehicle titles, and vehicle registrations. This information is a public record; however, social security numbers are not public information.

Section 1002.20 Definitions

"Secretary" means the Secretary of State of Illinois.

"Office" means the Office of the Secretary of State and not any particular department, address, or location.

"Driver Services" means the Department of Drivers Services of the Office of the Secretary of State.

"Vehicle Services" means the Department of Vehicle Services of the Office of the Secretary of State.

"Director" means the Director or Acting Director of either Driver Services or Vehicle Services, depending on the context.

~~02-1467~~

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ILLINOIS REGISTER

SECRETARY OF STATE

TEXT OF EMERGENCY RULES FOR CODIFICATION

"Drivers list" means the entire list or any part thereof of all licensed drivers by the State of Illinois, the information contained on the list includes the driver's name, address, weight, height, sex, color of eyes, color of hair, and date of birth.

"Vehicle list" means the list of all vehicles by identification number, with the name and address of the owners, which are registered by the State of Illinois.

"Title list" means the list of all vehicles titled by the State of Illinois.

"Request" means the written application upon the designated form for the obtaining of a drivers list, vehicle list, title list, or a driving abstract.

"Driving abstract" means a record kept by the Department of Drivers Services on each driver licensed by the State of Illinois, containing all information required by Section 6-106(b) of the Illinois Vehicle Code, and all records of each driver's violations of the traffic laws, and administrative actions pertaining to driving privileges.

"Section 2-123" means Section 2-123 of the Illinois Vehicle Code, found at Illinois Revised Statutes 1981, Chapter 95½.

Section 1002.30 Fees

- a) The fee for the sale of a drivers list pursuant to paragraph a of Section 2-123 is \$500.00.
- b) The fee for the sale of a title list or a vehicle list pursuant to paragraph a of Section 2-123 is \$500.00.
- c) For the purposes of Section 2-123(d), the fee for the additional copies of the registration lists furnished to sheriffs and chiefs of police by the Secretary shall be \$80.00 per list.
- d) All fees will be paid in advance before delivery of any list to any purchaser.
- e) Fees for information supplied by means of computer connections between the Secretary's computers and those of any other agency or person may be paid on a daily or monthly basis for all information delivered during that day or month, as determined by the Secretary and the agency or person to be the economically simplest way of billing.
- f) No fees may be charged from those local, State, and Federal government agencies who obtain information from the Secretary to enforce criminal laws.
- g) Computer terminal connections to the Secretary's computer may be provided to other State agencies. This service may be made available at no charge so long as the requesting agency incurs all terminal costs and so long as the service does not substantially increase costs or network traffic on the Secretary's computer.

SECRETARY OF STATE

TEXT OF EMERGENCY RULES FOR CODIFICATION

- h) Computer terminal connection may be allowed to non-State agencies at a monthly charge of \$300.00. This service may be terminated at any time, should the connection interfere with the Secretary's internal work schedules and processing.

Section 1002.40 Requests

- a) All requests for any type of information sale pursuant to Section 2-123 must be in writing, signed by the person requesting the information, and that person's address, and include the purpose of the request, the specific information or type of information sought, the name and address of any organization represented, the position of the requestor in the organization, the intended use of the information, and identification of the requestor including the requestor's drivers license number.
- b) Requests for information received by telephone shall have the information sought in paragraph a above obtained from the caller by an employee of Drivers or Vehicles and placed on a printed form.
- c) Information obtained by means of a computer connection between the Secretary's computers and those of any organization need not be requested in writing and a record kept as required in a) or b) above. The requesting organization shall comply with the provisions of a) at the time of the original request and contract period.
- d) For the purposes of Section 2-123(b), each request by a purchaser for the purchase of the drivers or vehicles list shall be treated as separate from any prior or succeeding request of that purchaser, and the \$200.00 advance fee shall apply to each request. For example, a request for information in January of a year followed by other requests from the same requester for the latest names or information relating to the first request, then each request shall be treated as separate and require the statutory fee.

Section 1002.50 Lists of Purchasers

All names of purchasers of information from Drivers or Vehicles shall be maintained for at least four (4) years by those Departments. These requests are public records and shall be disclosed to anyone requesting to inspect them during normal Secretary of State business hours at the office of the Director of Vehicles or Drivers, as is appropriate. Copies of these records may be purchased at the cost of \$.50 per page.

Section 1002.60 Contract

All commercial or business purchasers of the drivers, vehicle or title lists shall sign a contract with the Secretary, which shall contain those terms he deems necessary and appropriate to protect the integrity of the lists, including but not limited to, a requirement that a mail preference list maintained by a recognized trade association used to delete names of persons who do not wish

SECRETARY OF STATE

TEXT OF EMERGENCY RULES FOR CODIFICATION

to have their name sold, that the list will not be used for criminal or immoral purposes, that violation of any terms could result in the Secretary's denial of sale of the lists to the purchaser for a term of five years, and the return of the vehicles or drivers list to the Secretary.

Section 1002.70 Public Records

- a) The drivers lists, title list, vehicle list, and list of purchasers for these lists are public records and may be examined and purchased for the appropriate fees by anyone for a legitimate and lawful purpose and use.
- b) The Secretary may sell the lists in their entirety on the medium he deems most economical and efficient, or in any reasonable part, such as by county or counties, age group, zip code groups, make or model of car, restriction codes, license issue data, license expiration data, city, or other governmental or geographic division. No list will be prepared and sold by the Secretary for any person or organization for commercial purposes where the request is for the Secretary to extract from a larger group certain persons or types of persons to be solicited by the requestor, when the requestor, by the purchase of the larger group of names, titles, or registrations could extract the information it seeks.

Section 1002.80 Lists of Licenses

All persons or organizations licensed by the Office to act as new or used car dealers, remittance agents, used parts dealers, scrap processors, automotive parts recyclers, and rebuilders, together with the business addresses for such persons or organizations, may be placed on a list or lists and sold for the fee of \$.50 per page for each copy of each list of separate licensees.

Section 1002.90 Social Security Numbers

- a) Social Security Numbers of persons licensed to drive by the State of Illinois shall not be disclosed to any person, public or private agency, corporation, or governmental body, except as permitted by the Illinois Vehicle Code, Ill. Rev. Stat. 1981, ch. 95½, par. 2-123, as amended by Public Act 83-0148.
- b) Individual drivers may authorize the Secretary to release to designated persons or agencies the individual's Social Security Number. This authorization shall be in a written, notarized statement delivered to the Director of the Department of Driver Services in Springfield and shall remain in effect until terminated in the same manner by the individual driver.



F
KANSAS ASSOCIATION OF REALTORS[®]

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Mr. Chairman and members of the Committee, my name is Terry Cobb and I am the Legislative Chairman for the Kansas Association of REALTORS. I am here today to express support for House Bill 2917, a bill which amends the Open Records Act. House Bill 2917 will allow our association and other associations in a similar situation to receive lists from state agencies for our professional association work. The Open Records Act, which went into effect January 1, 1984, precludes us from obtaining lists of real estate licensees from the Real Estate Commission.

These lists are important to the Kansas Association of REALTORS to conduct daily business. First, we use the lists to mail course notices to all licensees, including those that are not members of our association. State law mandates that real estate salespeople have at least eight hours of continuing education every two years. For our association and other real estate sales schools around the state, the only method of informing licensees of continuing education classes is through the use of Real Estate Commission lists. Second, the Kansas Association of REALTORS is a professional association of real estate salespeople statewide that prides itself on an adherence to a strict code of professional ethics. Not every real estate licensee in Kansas is a member our the Kansas Association of REALTORS. The list provided to us by the Commission allows us and the public to keep better informed as to who is a REALTOR and to those who claim to be REALTORS, but are nonetheless not associated with our group.

-CONT.-

House Federal and State Affairs Committee

Page 2

We are in favor of the amendment to be offered by one of the proponents of this bill today. The amendment calls for availability of information from a state agency to a private association or professional group registered as a proprietary school with the state under the appropriate state laws.

We favor this amendment because the language of the amendment will allow us to receive lists from non-licensees that have made application to take the Kansas real estate salesperson's test. We will then be able, with the other real estate schools around the state, to offer a preparatory class for those who have pre-registered with the Real Estate Commission to take the exam.

I urge you to support this bill and its subsequent amendment. The passage of this bill will only bring us back to the status quo before the Open Records Act was passed. We seek nothing but the ability to continue our professional activities that we have maintained over the years.



Kansas
DEPARTMENT OF REVENUE

State Office Building
Topeka, KS 66625

MEMORANDUM

February 16, 1984

TO: The Honorable Robert H. Miller, Chairman
House Committee on Federal and State Affairs

FROM: Harley T. Duncan
Secretary of Revenue

SUBJECT: House Bill 2865 - Relating to Records of the Division of Vehicles

Thank you for the opportunity to appear before you in support of House Bill 2865. The bill concerns public access to records maintained by the Division of Vehicles of the Department of Revenue which are principally listings of those persons licensed to drive in Kansas and their addresses, and listings of all vehicles registered in Kansas, including the owner's name, address and type of vehicle. The bill accomplishes four things:

1. The bill amends K.S.A. 74-2012 to provide that records of the Division of Vehicles, with the exception of those relating to physical or mental condition, expungements and diversions, are open, public records and are subject to the access and copying privileges granted under the Open Records Act passed by the Legislature (House Bill 2668). The medical, expungement and diversion records remain confidential records as they are under current law.
2. The bill amends section 11 of the Open Records Act to provide clearly that records of the Division of Vehicles may not be used or obtained with the intent of giving or selling them to another entity for purposes of "selling or offering for sale any property or service" with one exception. The exception is those records obtained for the purpose of providing information to manufacturers of motor vehicles registered in this state. This exception is necessary to allow the Department to continue its current contract with an organization which uses the vehicle registration lists to assist motor vehicle manufacturers in notifying owners that their vehicles are being recalled for safety defects, and to compile statistical reports (without identifying owners) for manufacturers. However, the bill also amends K.S.A. 74-2012 to specify that the information provided to such an organization may be used only for recall and statistical purposes. Under the current contract, the information is also used to make advertising mailings on behalf of manufacturers. This would be precluded under this bill, and the Department will modify its contract accordingly.

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3. The bill provides that any person requesting vehicle records must sign a certification that the person does not intend to, and will not, sell, give or receive the information obtained for purposes of selling or offering for sale any property or services. This section (Section 1(b)) merely requires the requesting person to certify that they will abide by the proscriptions contained in Section 11 of the Open Records Act.
4. The bill strikes certain references in current law which list those persons to whom vehicle records must be provided, namely persons with a security interest in the vehicle, an employer or prospective employer of the person when driving a vehicle of the employer is required as a condition of employment, and a current or prospective insurer of the person. These enumerative references are considered unnecessary in that the Attorney General has ruled contrary to the Department's prior position that Division of Vehicles records are subject to the Open Records Act and that these persons would have access to the records whether they were enumerated in law or not. Neither is it felt that use by these individuals would contravene the prohibition on using public records for commercial purpose contained in Section 11 of the Open Records Act. Therefore, it is our determination that the listing contained in current law is unnecessary.

In short, the intent of House Bill 2865 is to make Division of Vehicles records virtually identical to all other public records; i.e., subject to the Open Records Act and available for public inspection and copying, but unavailable for commercial purposes or the soliciting of sales of property or service.

The bill is made necessary by a rather strange convergence of events. As originally passed, the Department had taken the position that the Open Records Act did not apply to vehicle records and that the list of persons to whom copies were to be made available in K.S.A. 74-2012 was limiting. The Attorney General, however, ruled that the Department was in error and that copies were to be provided to all parties having the right to inspect the records, which was anyone. The correction of the technical error in the Open Records Act had the effect of causing Division of Vehicles records to be excepted from the ban on the use of public records for commercial purposes. This correction, in the Department's view, coupled with the Attorney General's ruling, makes vehicle records the only records available for commercial purposes.

The Department feels this is inappropriate and urges your favorable consideration of House Bill 2865 for the following reasons:

1. We support the concept of "sunshine" in government and public access to public information. House Bill 2865 makes vehicle records clearly open records and treats them like all other state agency records.
2. We believe House Bill 2865 preserves the intent of the 1983 Legislature in passing the Open Records Act. It is our understanding that the Legislature relied upon the Department's interpretation that the Open

Records Act did not affect vehicle records because K.S.A. 74-2012 was limiting as to whom copies were to be provided. The reference to vehicle records in Section 11 of the Act was made, we are told, on the premise that further legislation would be necessary before they could be used for commercial purposes. The Attorney General's ruling, however, changed this, and the end result is, in our estimation, contrary to prior legislative intent. House Bill 2865 will treat vehicle records like all other public records. We believe this is appropriate.

3. We believe that it would be breaking faith with drivers and motor vehicle owners in Kansas if the State were to sell for commercial mailing list purposes the names and addresses they are required to give us to enjoy driving privileges. Obviously, nearly every person's name is currently on one or more mailing list. They appear there, however, through some voluntary step taken by the individual. Moreover, if an individual is aware that one entity with whom he/she is doing business is repeatedly selling names for mailing list purposes, he/she can take steps to sever that relationship. Providing a name and address for driver license or vehicle registration purposes is not, however, voluntary. Therefore, we believe we owe the public the security of knowing that the information they provide will not be used for commercial mailing list purposes.
4. Finally, we believe that if it is widely known that state driver license and vehicle registration lists are sold for commercial purposes it will hinder compliance with obtaining accurate information for our files. This is especially important because without a current address, drivers will not receive a license or registration renewal, and if they fail to renew, they will be driving contrary to law. Furthermore, the ability to notify drivers of suspensions or other disciplinary action is complicated by improper addresses. Lack of a proper address could also introduce a due process consideration into the proceedings if the driver fails to receive our written notices.

In short, House Bill 2865 is intended to provide clearly that records of the Division of Vehicles are to be treated in a fashion which is identical to all other public records. That is, they are open for public inspection and copying, but they may not be used for commercial purposes. We urge your favorable consideration of this bill.

HTD:b/2/S405

PROPOSED AMENDMENT TO HB 2865

Section 1, subsection (c), on Page 2, commencing at line 0068:

(c) The director of vehicles may furnish information in any of its public records to a requesting party who submits proof satisfactory to the director that the information requested is to be used by the requesting party for the purposes of assisting manufacturers of motor vehicles in notifying owners of vehicles (a) believed to have safety-related defects, (b) failing to comply with emission standards and (c) having any defect that will be remedied at the expense of the manufacturer and for the purpose of compiling statistical reports and for research.

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Testimony on HB 2865
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you for the opportunity to appear today and express our concerns about HB 2865 as it is presently drafted. We, as an association, have no position on whether motor vehicle reports should be open or closed. That is a public policy issue which we feel comfortable letting the Legislature decide. However, we would like the committee to consider several amendments to the proposal.

First, we would like to ask the committee to clarify under Section 1(b) that an insurance agent or company requesting a list of names in conjunction with applications for insurance is not subject to the prohibitions in Section 1(b).

Motor vehicle reports are perhaps the most important objective underwriting tool available to agents and their companies for writing auto insurance. They contain accident and moving violation information that has a direct bearing on the probability that an insured would have an accident. Good, law abiding drivers should pay less for their auto insurance. We assume that this issue is not a question here. By tying the exception for insurance agents and companies to applications it would prevent someone from just randomly requesting motor vehicle reports to solicit insurance. The wording in the present statute refers to applications for, or renewal, or cancellation of a casualty insurance policy on lines 43 and 44.

Whether the agent asked the customer to quote on the customer's auto insurance or the customer seeks out the agent, the agent would be quoting at the customer's request and for the customer's benefit. It is, nevertheless, a sales situation of a service which we think would be

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covered under Section 1(b) without our amendment. We do not believe this is the legislative intent, as the agent would be requesting the MVR with the knowledge and agreement of the consumer.

Since the agent or the company may have a number of applications to process at one time, it is quite possible they might request a "list" of names which we presume would mean any number in excess of one.

Our second amendment would allow motor vehicle reports to be made available through local law enforcement agencies if the local law enforcement agency chooses to. We have been seeking this amendment whether present law is changed or not in regard to open versus closed records. In fact, last year this committee passed SB 310 with an amendment in it allowing motor vehicle reports to be made available through local law enforcement agencies - essentially the same wording as we are requesting today. That wording was deleted by the Conference Committee on SB 310. To our knowledge, there were no specific opponents to allowing MVR's to be made available locally last year nor have any come forward this year.

Up until 1982 many of the larger local police and sheriff's offices were providing MVR's to local agents for use in underwriting auto insurance applications.

The local agent or the insured by obtaining a copy of the MVR, at the time the insurance is applied for, can guarantee complete, accurate information is used to underwrite their auto insurance. This avoids the embarrassing and often aggravating situation where an insured has "forgotten" about a few speeding tickets or mistakenly thought they received them more than three years prior to the effective date of insurance. The consumer is not well served if the insurance company then must come back and request additional premium or cancel and rewrite into a higher rated plan in a different company or refuse to offer coverage at any price.

The situation could also occur where the insured thought a ticket was received in the last three years and it was actually longer ago. They might then end up paying more for their insurance than they should. Most people honestly cannot remember specific dates and tickets received on all drivers in a household.

This issue is becoming increasingly important to our members as more companies shift underwriting responsibilities to the field with their agents to increase efficiency.

Our amendment is intended to permit, but not require, local law enforcement agencies to provide MVR's and charge the fee set by the Division of Motor Vehicles plus an additional amount to cover their local processing costs. The state's fee must be paid monthly to the Secretary of Revenue and they keep the portion to cover local costs.

Because it is possible that a local law enforcement agency could release information they should not such as expunged records, the Department of Revenue asked for a hold harmless clause. The state's computer is set up with a specific code for requesting an MVR and another code for requesting a police department report which could contain expunged information. It should not be a problem to simply order the correct type of report. If there is an error, it should be covered by the agency's insurance program, assuming they have the proper coverage.

The Department of Revenue aided in the drafting of our amendment and supports the concept. They properly interpreted present law two years ago to not allow local law enforcement agencies to provide MVR's to either the individual driver or his agent. Their notice stated that "law enforcement agencies have access to those files for law enforcement purposes only and are not authorized to release that information (referred to in K.S.A. 74-2012) to anyone else for any other purpose."

We urge the committee to take positive action on the public policy issue in question and to include wording which will allow MVR's to be made available locally. We would be happy to answer questions and provide any additional information we can. Thank you for your favorable consideration